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May 13, 2005

Federal Communications Commission  
Office of the Secretary  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Letter of Appeal  
CC Docket No. 02-6

Applicant Name: California Academy for Liberal Studies  
Billed Entity Number: 227938  
Form 471 Application Number: 345392  
Funding Request Number: 1007147

Applicant Name: Crystal Springs School A Program of IDDI  
Billed Entity Number: 2512  
Form 471 Application Number: 345507  
Funding Request Number(s): 1046558, 1046617, 1046636, 1046647

Applicant Name: Green Chimneys School  
Billed Entity Number: 10803  
Form 471 Application Number: 378380  
Funding Request Number(s): 1038716, 1038730, 1038741, 1038747, 1038757, 1038764, 1038772, 1038779

Applicant Name: Leary School of Virginia  
Billed Entity Number: 24584  
Form 471 Application Number: 345533  
Funding Request Number(s): 1003913

Applicant Name: Leary School - Prince Georges County  
Billed Entity Number: 154651  
Form 471 Application Number: 345527  
Funding Request Number(s): 1003816

Funding Year: 2003-2004  
Ed Tec's correspondence dated: January 17, 2005

The following is an appeal on the Schools and Libraries Division's (SLD) "Administrator's Decision on Appeal-Funding Year 2003-2004" dated March 18, 2004.

The SLD has denied Ed Tec's Appeal to the Schools and Libraries Division for a "Funding Commitment Decision Letter" dated November 22, 2004 denying total funding to the above listed funding requests.

In Ed Tec's letter of Appeal to the SLD on January 17, 2005 the following positions were stated:

We are appealing the Funding Commitment Decision Letter dated November 22, 2004 in which the above listed Funding Request Numbers (FRN's) have been denied total funding due to the following funding commitment decision explanation:

*"Similarities in the Forms 470 among applicants associated with this vendor indicate that the vendor was improperly involved in the competitive bidding and vendor selection process."*

We are deeply disappointed that the SLD denied the above listed funding requests based upon an indication of improper vendor involvement. We believe the SLD's Program Integrity Assurance (PIA) Teams and Selective Review Teams have been assigned to clarify any questions that arise during the review process in regard to the applicants various forms filed for the E-Rate grant. Hence, if there were questionable activity, it would have been the SLD's role to verify and determine as an absolute definite whether the accused indication of improper vendor involvement actually occurred, as opposed to simply denying the funding requests based upon a mere indication of such conduct. It is unwarrantable for an appeal process that may take years to resolve should have to be set in motion due to a reason that could have been easily determined in the outset of an appropriate review.

In our defense of such a claim, we can assert that no conduct prohibited by SLD on the service provider's part in all rules and regulations set forth by the SLD or FCC has transpired. Ed Tec submitted proposals to applicants just the same as any other vendor could have and we are sure did, based upon the description of services the applicant themselves chose to include for services they seek.

We are certain that the numerous applicants that have listed Ed Tec as their service provider on several funding requests and have received this same rejection would be willing to state that Ed Tec was not improperly involved in the competitive bidding and vendor selection process. Ed Tec stood a fair and even chance for the award of any of the proposals as did any other vendor that may have put forward a bid based upon the schools choice of description of services they were looking for.

Therefore we request that this decision be reversed and funding be committed to the applicants as they so rightfully deserve.

The administrators Decision on Appeal Explanation is as follows:

- On appeal, you seek reversal of the SLD decision to deny the referenced FRN based on vendor improper involved in the competitive bidding and vendor selection process. In support of your argument, you assert that Ed Tec Solutions, LLC DBA Ed Tec (Ed Tec) has not violated any conduct prohibited by the SLD; Ed Tec submitted proposals to applicants in the same manner as any other vendor based upon the description of services the applicant themselves chose to include for services they sought.
- Upon thorough review of your appeal, it was determined that the cited establishing Form 470 displays striking similarities with the Form 470 certifications and service descriptions of other applicants who selected Ed Tec Solutions, LLC DBA Ed Tec as their provider. The Form 470 exhibits a pattern from identifier, service description and certification, which implies service provider involvement in the bidding process. Furthermore, an audit of the applicants conducted by the USAC Office of General Counsel has determined that Ed Tec recommended a consultant to applicants to fill out the program forms. The auditors also found evidence of a payment having been made to the consultant (Riki Epstein of 631 Sixth Street, Lakewood, NJ 08701). Such similarities indicate that the vendor was improperly involved in the competitive bidding process, which is a violation of the rules of this Support Mechanism.
- SLD denied your funding request(s) because it determined that similarities in the Form 470 provided to SLD among applicants associated with this vendor, indicate that the vendor was improperly involved in the competitive bidding and/or vendor selection process. In your appeal, you have not shown that SLD's determination was incorrect. Consequently, SLD denies your appeal.
- FCC rules require applicants to submit an FCC Form 470 to USAC for posting on its web site. 47 C.F.R. 54.504(b). The FCC requires applicants to "submit a complete description of the services they seek so that it may be posted for competing service providers to evaluate." Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157, 570 (rel. May 8, 1997) (Universal Service

Order). The FCC requires “ the application to describe the services that the schools and libraries seek to purchase in sufficient detail to enable potential providers to formulate bids.” Id.575. The Form 470 warns applicants that “(s)ervice provider involvement with the preparation or certification of a Form 470 can taint the competitive bidding process and result in the denial of the funding requests. See Schools and Libraries Universal Service, Description of Services Requested and Certification Form 470, OMB 3060-0806 (FCC Form 470). Once the applicant enters into an agreement(s) with the service provider(s), the applicant submits an FCC Form 471 to SLD. 47 C.F.R. 54.504(c). The FCC has stated that applicants cannot abdicate control over the application process to a service provider that is associated with the FCC Form 471 for that applicant. Request for Review by Bethlehem Temple Christian School, Federal–State Joint Board on Universal Service. Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45, 97-21, DA-01-852 6 (rel. Apr. 6, 2001.)

- Pursuant to its authority to administer the Schools and Libraries Support Mechanism, SLD selects certain applicants for a Selective Review to ensure that they are following FCC rules relating to, among other things, the competitive bidding process. Applicants who are chosen for this review are sent the “E-Rate Selective Review Information Request.” As part of this request, applicants are asked to answer certain questions regarding their competitive bidding and vendor selection process. In particular, applicants are asked to:

Please provide complete documentation indicating how and why you selected the service provider(s). This documentation should include a description of your evaluation process and the factors you used to determine the winning contracts(s).

- According to the Selective Review Information Request, the person authorized by the applicant to sign on the applicant’s behalf, or the entity’s authorized representative, is required to certify that the authorized signer prepared the responses to the Selective Review Information Request on behalf of the entity.

SLD has denied total funding to the above listed funding requests due to what they considered an “indication” of vendor involvement. The indications the SLD has listed were twofold.

- 1-The similarities in the actual form 470’s
- 2-The fact that Ed Tec recommended a consultant.

These two issues have no bearing, in our opinion, to the application process.

While many applicants filed their Form 470 applications solely on their own, there were, due to various reasons, numerous schools that relayed to us their inability to file their own Form 470 and that they needed assistance. The applicants requested we assist in preparing their Form 470. Ed Tec’s reply was that while it is allowable for Ed Tec as a service provider to provide help and assistance in the preparation of the Form 471, we are prohibited from helping with the filing of the Form 470. We advised the applicants that the only thing we could offer is to find a consultant that would perhaps do it for the school since according to E-Rate regulations we could not be involved with the Form 470. Being keenly aware of the guidelines set forth by the SLD for the Form 470, we sought guidance directly from the SLD before advising the applicants to have their Form 470 filed in such a manner. A question was submitted via email to the SLD asking whether a service provider is allowed to recommend a private consultant who will assist the schools in filing their Form 470’s. The reply that was received was that “a service provider can recommend an outside consultant if that consultant has no ties to the service provider.” The SLD specifically stated that this action is permitted so long as “all parties involved would ensure that there is no conflict of interest in the recommendation of a consultant by a service provider” and “it is acceptable for applicants to receive assistance from outside consultation so long as the requirements for competitive bidding are met”. For a full review of the Questions and Answers please see Attachment A. It therefore mystifies us how the SLD can offer guidance and state unequivocally that these actions are permissible provided their guidelines were met (which they were) and when it comes time for the review and award of the funding requests filed in such a method, the SLD rejected their own position. The fact that there was a payment made between the school and the consultant only serves to reinforce the reality that there was an independent relationship between the school and the consultant, hence the payment. There are no financial ties between Ed Tec and the independent consultant.

We cannot and will not take responsibility for the style that outside consultants use to write up their Form 470’s. One can easily speculate that a consultant will make recommendations to their various clients and have them take advantage of all possible services, hence the similarities in description as well as form identifier, as each consultant

has their own individual style and manner in completing forms. However, since we were not involved in the process, we cannot assure you of this nor take responsibility.

Furthermore, to strengthen this appeal we can add the following. Many of the applicants that Ed Tec recommended use of this consultant to, actually ended up choosing a provider other than Ed Tec. It is precisely due to the fact that the application that was filed was specific enough for each school although the verbiage was very similar because many schools take advantage of the same discounted services offered by the SLD. It included all the necessary information regarding the services the applicant was seeking and allowed for any vendor to submit a bid, as was the case by many.

Although all the requirements of a valid Form 470 posted for a school were met, the applicants are being penalized for using a consultant that filed forms for various schools in a similar manner. There is no validation for this denial.

In summation:

- The denial is "Due to similarities in the Form 470 provided to SLD among applicants associated with this vendor, indicate that the vendor was improperly involved in the competitive bidding and/or vendor selection process."

Ed Tec's position: Ed Tec has had no involvement in the form 470. As the SLD determined, the schools used a consultant to accomplish this. This would explain the similar style and similarity in verbiage in the Form 470's

- The SLD states that Ed Tec recommended to the applicants a consultant.

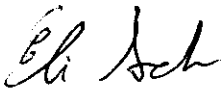
Ed Tec's position: That is true. Ed Tec inquired and received a response that there is no problem in doing so, so long as competitive bidding requirements were met. The requirements were met.

- SLD has assumed that improper involvement occurred.  
Ed Tec has confirmed otherwise.

We trust this will be rectified and adjusted accordingly. We ask the FCC to instruct the SLD to overturn this decision and offer clear, consistent guidance in the future.

Please contact me to discuss this appeal and for any further information that may be necessary.

Sincerely,



Eli Schwartz  
President  
Ed Tec Solutions, LLC  
500 W. Kennedy Blvd., Ste 2e  
Lakewood, NJ 08701  
732.367.9919 ext.11-telephone  
732.367.9918-fax  
[eli@edtecsolutions.com](mailto:eli@edtecsolutions.com) -email



>Date: Thu, 20 Mar 2003 17:48:09 -0600

>

>Thank you for your inquiry. A Service Provider can recommend an outside  
>consultant if that consultant has no ties to the Service Provider. All  
>parties involved would need to ensure that there is no conflict of interest  
>in the recommendation of a consultant by a service provider.

>Prior to posting the Form 470 for any services other than basic telephone  
>service, applicants are required to have a technology plan that defines the  
>educational objectives to be served by technology, the technology needs,  
>and

>the resources that will be required for those technology needs. The plan  
>must include a sufficient level of information to justify and validate the  
>products and services sought by means of the Form 470 and, if available,  
>RFP. If the technology plan is not sufficiently developed before posting of  
>the Form 470, the competitive process is undermined.  
>The applicant must choose how much to rely on an outside consultant in  
>planning and implementing the technology plan.

>

>If you have any further questions, please feel free to contact our Schools  
>and Libraries Helpline at 888-203-8100 or contact us at

>question@universalservice.org. Please remember to visit our website for

>updates: < <http://www.sl.universalservice.org>

><<http://www.sl.universalservice.org>> >

>

>Thank you,

>Schools and Libraries Division

>Universal Service Administrative Company

><hmg,lkr>

>

> > -----Original Message-----

> > From: Yachet Kornwasser [SMTP:ykornwasser@hotmail.com]

> > Sent: Thursday, March 20, 2003 3:58 PM

> > To: question@universalservice.org

> > Subject: a question on e-rate

> >

> >

> >

> >

> > In regard to becoming a Service Provider of Internal Connections for  
> > schools

> > and libraries under the Universal Service Program, I am under the  
> > impression

> > that you have disallowed potential service providers from giving any  
> > assistance to schools and libraries in filling out the information  
> > required

> > on Form 470 and 471. After reviewing the federal regulations at 47 CFR  
> > 54,

> > the notice on your website, and the language of the forms themselves, it  
> > seems that what is clearly prohibited is the filing or signing of these  
> > forms by any party other than the schools or library itself. The  
>language

> >

> > on your website or in the forms themselves indicates that there would be  
> > any

> > violation of a prospective vendor giving technical assistance to a  
> > prospective client without obligation prior to the competitive bidding  
> > process. Indeed 47 CFR 54.511 specifically states that factors other  
> > than

> > lowest price may be considered. Indeed, 47 CFR 54.511 specifically  
>states

> >

> > that factors other than the lowest price may be considered. Further, 47  
> > CFR

> > 54.511 specifically states that factors other than lowest price may be

> > considered good and comprehensive service would therefore be a  
> legitimate  
> > consideration, within reason, and no violence is done to the spirit or  
> > letter of the regulations if a customer actually chooses a vendee  
> > submitting  
> > a competitive bid, in part because of courtesy and service the vendee  
> has  
> > already provided free of charge prior to the bid process. Even the  
> > poorest  
> > schools and libraries will be paying a significant amount for Internal  
> > Connections, and all bids are limited by the "corresponding price" rule.  
> > Therefore, there is incentive for the purchaser to accept the lowest  
> > possible bid, and there is some legal assurance that the bids will be  
> kept  
> >  
> > at market levels.  
> >  
> >  
> > Furthermore, if a consultant recommended by a vendor gives technical  
> > assistance to prospective participants in E-Rate in regard to filing  
> their  
> >  
> > forms 470 and 471, the idea is that the consultant will create the same  
> > moral incentives to do business with the vendor that would be created if  
> > assistance were given directly by the vendor itself. The forms required  
> > to  
> > be filed in order to participate in this Universal Service Program are  
> not  
> >  
> > unnecessarily complex, but they are daunting enough to prevent many  
> schools  
> >  
> > and libraries in participating in this valuable program unless they have  
> > some help in preparing documentation. The prospective vendors have  
> > legitimate business interest in trying to create good will and trying to  
> > generate potential clients who might otherwise never participate in the  
> > program. Therefore, they have an appropriate interest in assisting in  
> > document preparation. By recommending a consultant who will advise them  
> > of  
> > all services available to the school under the E-rate grant and complete  
> > the  
> > necessary forms for the school, the school or library, itself, will take  
> > responsibility for the application by certifying it appropriately.  
> > Anything  
> > that makes that application a lie or a sham obviously must be  
> prohibited.  
> >  
> > However, legitimate technical assistance given without legal obligation  
> > seems to be beneficial to the purchaser, clearly within the language of  
> > the  
> > regulation, and a marketing strategy available to all vendors,  
> regardless  
> > of  
> > size. The essential questions are these:  
> >  
> > 1) Is a service provider allowed to recommend a private consultant that  
> > will assist the school in filing a form 470?  
> > 2) Being that the school does not always have the grant or technology  
> > knowhow, is it acceptable for the school to rely on an outside  
> consultant  
> >  
> > who recommends to include all eligible services that the school can  
> > benefit  
> > from?  
> >

> > Please let me know if you agree with the above analysis. If you do not,  
> > please cite the relevant rules, regulations or statutes that would  
> > prohibit  
> > this practice. PLEASE DO NOT refer me to the SLD website which I have  
> > already visited and found very vague and unclear.

> > Thank you very much for your attention and consideration to this matter.

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